

Attorney's Docket No.: 2500.128US1

Applicant or Patentee: BEN SHEN, WEN LIU, STEVEN D. CHRISTENSON and SCOTT STANDAGE
Serial or Patent No.: 09/478,188
Filed or Issued: JANUARY 5, 2000
For: GENE CLUSTER FOR PRODUCTION OF THE ENEDIYNE ANTITUMOR ANTIBIOTIC C-1027

STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS
(37 CFR 1.9(f) and 1.27(d)) - NONPROFIT ORGANIZATION

I hereby declare that I am an official empowered to act on behalf of the nonprofit organization identified below:

NAME OF ORGANIZATION THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
ADDRESS OF ORGANIZATION 1111 Franklin Street, Fifth Floor, Oakland, California 94607-5200

TYPE OF ORGANIZATION:

- ☒ University or other institution of higher education
☐ Tax exempt under Internal Revenue Service Code (26 USC 501(a) and 501(c)(3))
☐ Nonprofit scientific or educational under statute of state of the United State of America:
Name of State: _____
Citation of Statute: _____
☐ Would qualify as tax exempt under Internal Revenue Service Code (26 USC 501(a) and 501(c)(3))
if located in the United States of America
☐ Would qualify as nonprofit scientific or educational under statute of state of the United States of
America if located in the United States of America
Name of State: _____ Citation of Statute: _____

I hereby declare that the nonprofit organization identified above qualifies as a nonprofit organization as defined in 37 CFR 1.9(e), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code with regard to the invention entitled: GENE CLUSTER FOR PRODUCTION OF THE ENEDIYNE ANTITUMOR ANTIBIOTIC C-1027, by inventor(s) BEN SHEN, WEN LIU, STEVEN D. CHRISTENSON and SCOTT STANDAGE described in:

- ☐ the specification filed herewith
☒ Application Serial No. 09/478,188 filed JANUARY 5, 2000
☐ Patent No. _____, issued _____

I hereby declare that rights under contract or law have been conveyed to and remain with the nonprofit organization with regard to the above identified invention.

If the rights held by the nonprofit organization are not exclusive, each individual, concern or organization having rights to the invention is listed below* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e). *NOTE: Separate statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).

NAME _____
ADDRESS _____
☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this statement is directed.

SIGNATURE Linda S. Stevenson DATE APRIL 10, 2000
LINDA S. STEVENSON
Title: PRINCIPAL PROSECUTION ANALYST
ADDRESS OF PERSON SIGNING 1111 Franklin Street, Fifth Floor, Oakland, California 94607-5200



PATENT APPLICATION DECLARATION
(Attorney's Docket No.: 2500.128US1)

Each of the Applicants named below hereby declares as follows:

1. My residence, post office address and country of citizenship given below are true and correct.

2. I believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought in the patent application entitled. **"GENE CLUSTER FOR PRODUCTION OF THE ENEDIYNE ANTITUMOR ANTIBIOTIC C-1027,"** Serial No. 09/478,188, filed January 5, 2000, and I have reviewed and understand the contents of the specification, including its claims.

3. I acknowledge my duty to disclose to the Office all information known to me to be material to patentability of this application, in accordance with 37 C.F.R. Section 1.56, which is defined on the attached page.

4. This application is based upon provisional application Serial No. 60/115,434, filed January 6, 1999.

5. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 4/5/2000

BEN SHEN

Residence and **1842 Rushmore Lane**
Post Office Address: **Davis, California 95616 USA**
(Citizenship: **People's Republic of China**)

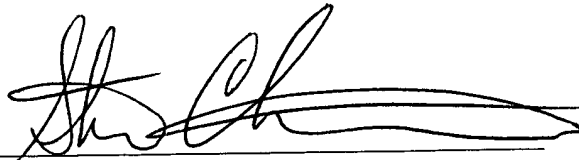
Date: 3/28/2000

WEN LIU

Residence and **Institute of Medicinal Biotechnology**
Post Office Address: **Tiantan, Beijing 100005 CHINA**
(Citizenship: **People's Republic of China**)

Date:

4/5/2000



STEVEN D. CHRISTENSON

Residence and

1789 Monarch Lane

Post Office Address:

Davis, California 95616 USA

(Citizenship: United States of America)

Date:

SCOTT STANDAGE

Residence and

17 Chamberling Court

Post Office Address:

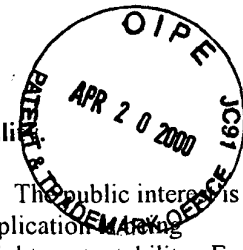
Westfield Lane

Cambridge CB4 3QX

UNITED KINGDOM

(Citizenship: United Kingdom)

Section 1.56 Duty to Disclose Information Material to Patentability



(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information, which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied, if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

- (i) Opposing an argument of unpatentability relied on by the Office, or
- (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.



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Date: _____

Residence and Post Office Address: **BEN SHEN**
1842 Rushmore Lane
Davis, California 95616 USA
(Citizenship: **People's Republic of China**)

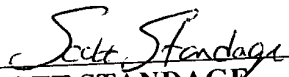
Date: _____

Residence and Post Office Address: **WEN LIU**
Institute of Medicinal Biotechnology
Tiantan, Beijing 100005 CHINA
(Citizenship: **People's Republic of China**)

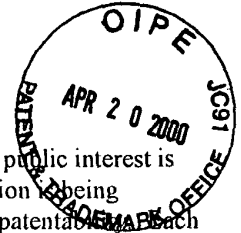
Date: _____

Residence and Post Office Address: **STEVEN D. CHRISTENSON**
1079 Monarch Lane
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(Citizenship: **United States of America**)

Date: 2nd April 2000

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UNITED KINGDOM
(Citizenship: **United Kingdom**)

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